

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER KOSTYSHYN,	§
	§
Defendant Below-	§ No. 213, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0109019316
Plaintiff Below-	§
Appellee.	§

Submitted: November 8, 2006

Decided: January 8, 2007

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 8th day of January 2007, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In March 2006, the Superior Court found the defendant-appellant, Peter Kostyshyn (Kostyshyn), in violation of the terms of a previously-imposed probation. The Superior Court sentenced Kostyshyn on the VOP to three years at Level V imprisonment to be suspended immediately for decreasing levels of supervision. This is Kostyshyn's appeal.

(2) Kostyshyn's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Kostyshyn's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Kostyshyn's attorney informed him of the provisions of Rule 26(c) and provided Kostyshyn with a copy of the motion to withdraw and the accompanying brief. Kostyshyn also was informed of his right to supplement his attorney's presentation. Kostyshyn has not raised any issues for this Court's consideration. The State has responded to the position taken by Kostyshyn's counsel and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.*

* *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) This Court has reviewed the record carefully and has concluded that Kostyshyn's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Kostyshyn's counsel has made a conscientious effort to examine the record and the law and has properly determined that Kostyshyn could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice